

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 STEVEN B. BEGEY

12 Plaintiff,

13 v.

14 MICHAEL J. ASTRUE,
Commissioner of Social Security

15 Defendant.
16

No. CV 10-3332 AGR

MEMORANDUM OPINION AND ORDER

17 Plaintiff Steven B. Begey filed a complaint on May 6, 2010. Pursuant to 28
18 U.S.C. § 636(c), the parties consented to proceed before the magistrate judge on May
19 21 and June 18, 2010. (Dkt. Nos. 8, 9.) On February 15, 2011, the parties filed a Joint
20 Stipulation ("JS") that addressed the disputed issues. The Court has taken the matter
21 under submission without oral argument. Having reviewed the entire file, the Court
22 affirms the decision of the Commissioner.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

I.

PROCEDURAL BACKGROUND

On June 23, 2005, Begey filed an application for disability insurance benefits. Administrative Record ("AR") 14.¹ He alleged a disability onset date of March 3, 2003. *Id.* The application was denied initially and on reconsideration. *Id.* Begey requested a hearing before an Administrative Law Judge ("ALJ"). AR 36. On September 13, 2007, an ALJ conducted a hearing at which Begey testified. AR 1329-57. On October 18, 2007, the ALJ issued a decision denying benefits. AR 14-22. On March 3, 2010, the Appeals Council denied the request for review. AR 3-6. This action followed.

II.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence, or if it is based upon the application of improper legal standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995); *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

In this context, "substantial evidence" means "more than a mere scintilla but less than a preponderance – it is such relevant evidence that a reasonable mind might accept as adequate to support the conclusion." *Moncada*, 60 F.3d at 523. In determining whether substantial evidence exists to support the Commissioner's decision, the Court examines the administrative record as a whole, considering adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. Where the evidence is susceptible to more than one rational interpretation, the Court must defer to the decision of the Commissioner. *Moncada*, 60 F.3d at 523.

¹ Begey previously filed an application for disability insurance benefits on June 27, 2001. AR 15. The application was denied and Begey did not request a hearing before an Administrative Law Judge. *Id.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

DISCUSSION

A. Disability

A person qualifies as disabled and is eligible for benefits, "only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." *Barnhart v. Thomas*, 540 U.S. 20, 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003).

B. The ALJ's Findings

The ALJ found that Begey met the insured status requirements through March 31, 2007. AR 16. Begey had the following severe impairments: degenerative joint and disc disease of the cervical spine with moderate spinal stenosis, degenerative joint disease, left shoulder, status post left shoulder arthroscopic decompression in 2002, coronary artery disease, status post stent placement times two with one stent replacement, noninsulin dependent diabetes mellitus, controlled hypertension, hyperlipidemia, tobacco abuse, moderate obesity with chronic obstructive sleep apnea, old healed left patella fracture, and adjustment disorder, mild, with mixed emotional features. AR 17.

The ALJ found Begey had the residual functional capacity ("RFC") to perform light work, except stand or walk occasionally (two out of eight hours), sit frequently (six out of eight hours) with customary breaks, and climb, balance, stoop, kneel, crouch, or crawl occasionally. AR 19. Begey could not perform any past relevant work, but he could perform jobs that exist in significant numbers in the national economy. AR 22.

C. Treating Physician

Begey contends the ALJ failed to provide specific and legitimate reasons for discounting the opinion of treating cardiologist Dr. Campo. Begey does not contend Dr.

///

///

1 Campo's opinion is entitled to controlling weight,² but argues his opinion "could be
2 entitled to greater weight as compared to the opinions of the non-treating physicians for
3 a finding of disability." JS 10.

4 An opinion of a treating physician is given more weight than the opinion of non-
5 treating physicians. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). When a treating
6 physician's opinion is contradicted by another doctor, "the ALJ may not reject this
7 opinion without providing specific and legitimate reasons supported by substantial
8 evidence in the record. This can be done by setting out a detailed and thorough
9 summary of the facts and conflicting clinical evidence, stating his interpretation thereof,
10 and making findings." *Id.* at 632 (citations and quotation marks omitted). An ALJ may
11 reject a treating physician's opinion based on an examining physician's opinion with
12 independent clinical findings. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).
13 A nonexamining physician's opinion may constitute substantial evidence when it is
14 supported by other evidence in the record and is consistent with it. *Id.*

15 Dr. Campo filled out a Cardiac Residual Functional Capacity Questionnaire
16 ("Questionnaire") dated August 13, 2007. AR 805-09. He stated he treated Begey every
17 two months for cardiac evaluation. AR 805. He indicated Begey could sit about two
18 hours per workday, stand or walk less than two hours per workday, lift and carry ten
19 pounds occasionally, never carry twenty pounds or more, and must avoid even
20 moderate exposure to extreme cold and heat, wetness, humidity, fumes, odors, dusts,
21 gases, poor ventilation, and hazards such as machinery and heights. AR 807-08.
22 Begey should elevate his legs with prolonged sitting. AR 808. Although Begey's cardiac
23 symptoms did not cause depression or chronic anxiety, Begey should avoid all but low
24 stress situations. AR 806. He opined Begey's cardiac symptoms would often interfere

25
26 ² A treating physician's opinion on the nature and severity of a claimant's
27 impairment(s) is given controlling weight if the ALJ finds that the opinion is "well-
28 supported by medically acceptable clinical and laboratory diagnostic techniques and is
not inconsistent with the other substantial evidence" in the record. 20 C.F.R. §
404.1527(d)(2).

1 with his attention and concentration. *Id.* He estimated Begey would be absent from
2 work more than three times a month. AR 808.

3 The ALJ provided specific and legitimate reasons for declining to give Dr.
4 Campo's Questionnaire "any significant weight." AR 21. He determined Dr. Campo's
5 opinion was not supported by Begey's treatment records or the record as a whole. AR
6 21. The ALJ acknowledged Begey's coronary disease and stent placements in 2003.
7 AR 930-32, 1031-33. Begey points to chest pain he later suffered in April 2006,³ and
8 results of the angiogram which showed 40%-50% narrowing at some points. AR 37-39.
9 However, the ALJ correctly noted that the treating records do not support Dr. Campo's
10 opinion dated August 2007. In July 2006, treating physician Dr. Kim notes Begey
11 complained of anxiety and chest pain, which was relieved with narcotic medications
12 rather than nitroglycerin. Dr. Kim concluded the chest pain was noncardiac in origin. AR
13 321. On April 4, 2007, Dr. Kim's records indicate Begey "had been asymptomatic for
14 any severe chest pains since" July 2006 and "occasionally get[s] chest discomfort but
15 usually is relieved promptly with nitroglycerin." AR 259. Dr. Kim again concluded Begey
16 "has atypical chest pain, probably a combination of musculoskeletal pain and anxiety."
17 AR 260; see *also* AR 321, 335 (August 2006). In the medical records subsequently
18 submitted to and considered by the Appeals Council for a period after the date last
19 insured, coronary angiography in February 2008 showed a 45% stenosis in the mid left
20 anterior descending artery, a 50% stenosis in the distal circumflex system at the site of a
21 stent and a 40% proximal narrowing of the first diagonal. AR 1226. The treating
22 physician concluded Begey "does not have hemodynamically significant coronary artery
23 disease."⁴ AR 1227. In July 2008, Begey was advised to increase his activities and
24

25 ³ It appears Begey had resumed smoking in the prior months. AR 333.

26 ⁴ The treatment notes state: "The angiographic findings were once again
27 explained to Mr. Begey. He does not have hemodynamically significant coronary artery
28 disease, and therefore most of his chest pains are not likely to be 'angina.' He should
continue his current medications. The importance of losing weight and quitting smoking

1 exercise. AR 1208. As the ALJ noted, the record contained substantial evidence
 2 showing mild to normal results of chest x-rays, angiograms, electrocardiograms, stress
 3 tests and echocardiograms throughout the relevant period. AR 17-18, 163, 176-78, 203,
 4 262-63, 321, 497-99, 511-12, 515, 718, 833-35, 918-19, 920-21. Ischemia and acute
 5 coronary syndrome were repeatedly ruled out. AR 176-78, 263, 321, 497-99, 511-12,
 6 833-35, 918-21. The ALJ noted Dr. Campo's physical examinations of Begey in August
 7 2006 and January 2007 reflected normal results, except for 1+ ankle edema. AR 18,
 8 174-75.

9 Substantial evidence supports the ALJ's conclusion that the treatment records,
 10 including extensive testing, did not support the limitations set forth by Dr. Campo in
 11 August 2007. AR 17-18, 21. To the extent there is a conflict in the treating records, it is
 12 for the ALJ to resolve the conflicts. The ALJ did not err.

13 **D. Treating Psychiatrist**

14 Begey argues that the ALJ failed to articulate specific and legitimate reasons for
 15 rejecting the opinion of the treating psychiatrist, Dr. LaHaye.⁵

16 As discussed above, the opinion of a treating physician is given more weight than
 17 the opinion of non-treating physicians. *Orn*, 495 F.3d at 631. When a treating
 18 physician's opinion is contradicted by another doctor, "the ALJ may not reject this
 19 opinion without providing specific and legitimate reasons supported by substantial
 20 evidence in the record. This can be done by setting out a detailed and thorough
 21

22
 23 has been emphasized to him; he may benefit from referral to a stop smoking program."
 24 AR 1227.

25 ⁵ The Commissioner argues Dr. LaHaye was not a treating psychiatrist due to her
 26 "short-term relationship" with Begey. The Court disagrees. See *Benton v. Barnhart*,
 27 331 F.3d 1030, 1038-39 (9th Cir. 2003) (physician who examined patient once may
 28 complete Mental RFC Assessment on behalf of treatment team); *Ghokassian v.*
Shalala, 41 F.3d 1300, 1303 (9th Cir. 1994) (physician who saw claimant twice within
 14-month period, prescribed medication and referred to him as "my patient" was treating
 physician); 20 C.F.R. § 404.1502.

1 summary of the facts and conflicting clinical evidence, stating his interpretation thereof,
2 and making findings.” *Id.* at 632 (citations and quotation marks omitted).

3 In a letter dated February 19, 2007, Dr. LaHaye stated that Begey had been her
4 patient since December 28, 2006 and he suffers from major depression. AR 185. She
5 further stated that he has responded well to medication, but he remains “realistically
6 concerned and upset about the serious medical issues in his life.” *Id.* She stated Begey
7 could not return to work due to decreased attention, focus, concentration and mood. *Id.*

8 The ALJ rejected Dr. LaHaye’s February 19, 2007 opinion. AR 18. He found it
9 inconsistent with the findings of the consultative examiner and the State agency
10 psychiatrists; unsupported by the regulation’s B-criteria as it did not indicate a serious
11 restriction of activities of daily life or social functioning;⁶ and contradicted by formal
12 testing, which indicated no serious limitation of concentration or memory. *Id.* He also
13 cited Begey’s limited treatment history with Dr. LaHaye. *Id.* The ALJ found Begey had
14 no severe mental impairment that would preclude all work. *Id.*

15 The ALJ may properly consider the consistency of the opinion with the record as a
16 whole. *Orn*, 495 F.3d at 631; 20 C.F.R. § 404.1527(d)(4). The ALJ found Dr. LaHaye’s
17 opinion inconsistent with the findings of the consultative examiner, Dr. Abejuela. AR 18,
18 894-900. An examining physician’s opinion constitutes substantial evidence when, as
19 here, it is based on independent clinical findings. *Orn*, 495 F.3d at 631. Dr. Abejuela
20 stated that “[t]he objective findings in the mental status examination revealed some mild
21 depression and mild anxiety consistent with an adjustment disorder with mixed
22 emotions.” AR 899. Dr. Abejuela found no mental restriction in Begey’s daily activities
23 and mild mental difficulties in social functioning. *Id.* His concentration, persistence and
24 pace were mildly impaired, and there were no episodes of deterioration in work-like
25 situations. *Id.* Begey’s ability to understand, carry out, and remember simple
26 instructions is not impaired, and his response to co-workers and supervisors, and the

27 ⁶ The “B-criteria” is referenced in the Listings for mental impairments. See, e.g., 20
28 C.F.R., Part 404, Subpart P, Appendix 1 § 12.04.

1 public is mildly impaired. *Id.* His psychiatric prognosis is fair to good. AR 900. The ALJ
2 also relied upon the opinions of the state agency physicians. AR 18, 861-75. Their
3 opinions constitute substantial evidence when, as here, the opinions are consistent with
4 other evidence in the record. *Andrews*, 53 F.3d at 1041.

5 The ALJ also found Dr. LaHaye's opinion inconsistent with Begey's activities of
6 daily life and formal testing, which indicated no serious limitation of concentration or
7 memory. AR 18. Begey testified he smoked a half to three-quarters of a pack of
8 cigarettes per day, drove up to twenty miles at a time, had a valid California driver's
9 license without restriction, occasionally watched the children in his wife's child care
10 business, and drove his children to and from school. AR 20, 1338-41. In addition, Dr.
11 Abejuela conducted a mental status examination and found that Begey had only mild
12 impairments in concentration and memory. AR 899.

13 To the extent the ALJ erred in not addressing Dr. LaHaye's check-the-box March
14 28, 2007 questionnaire that noted marked limitations in performing activities of daily
15 living and extreme limitations in maintaining concentration, persistence or pace, any
16 error would be harmless. *See Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050,
17 1055 (9th Cir. 2006) (an error is harmless if it is "inconsequential to the ultimate
18 nondisability determination"); *see also McLeod v. Astrue*, 640 F.3d 881, 887-88 (9th Cir.
19 2011) (party challenging agency determination has burden to show prejudice resulted
20 from alleged error). The March 28, 2007 questionnaire suffers from the same defects as
21 Dr. LaHaye's February 19, 2007 opinion, except that it listed the B-criteria factors.⁷
22 Moreover, Dr. LaHaye opined that Begey's mental impairment had not lasted or would

23
24 ⁷ Begey argues that Dr. LaHaye's mental status findings in her initial evaluation on
25 December 28, 2006 constitute clinical findings. JS 13; AR 191. However, Dr. LaHaye's
26 subsequent treatment records indicate that a few days later on January 4, 2007, Begey
27 was less anxious and less isolative, with no problems from the medications. AR 188.
28 On January 18, 2007, he was less depressed and his family told him he was back to
normal. AR 187. Even at the initial evaluation, Begey was well-groomed and calm. His
thought processes and judgment were intact. AR 191. Her treatment records do not
support the extreme limitations in the March 28, 2007 questionnaire.

1 not be expected to last at least twelve months. AR 816. To satisfy the duration
 2 requirement at step two of the sequential analysis, the severe impairment must have
 3 lasted or be expected to last for a continuous period of not less than twelve months. 20
 4 C.F.R. § 404.1520(a)(4)(ii); *Bowen v. Yuckert*, 482 U.S. 137, 140, 107 S. Ct. 2287, 96 L.
 5 Ed. 2d 119 (1987).

6 The length of the treating relationship and frequency of examination are factors an
 7 ALJ may consider. *Orn*, 495 F.3d at 631; see also 20 C.F.R. § 404.1527(d)(2)(i)
 8 (“Generally, the longer a treating source has treated you and the more times you have
 9 been seen by a treating source, the more weight we will give to the source’s medical
 10 opinion. When the treating source has seen you a number of times and long enough to
 11 have obtained a longitudinal picture of your impairment, we will give the source’s opinion
 12 more weight than we would give it if it were from a nontreating source.”). Dr. LaHaye
 13 started treating Begey on December 28, 2006 and wrote the letter on February 19,
 14 2007.⁸ AR 185. She saw Begey four times in that period. AR 186-91.

15 The ALJ provided specific and legitimate reasons for rejecting Dr. LaHaye’s
 16 opinion. The ALJ did not err.

17 IV.

18 ORDER

19 IT IS HEREBY ORDERED that the decision of the Commissioner is affirmed.

20 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order
 21 and the Judgment herein on all parties or their counsel.

22
 23 

24 DATED: August 12, 2011

25

ALICIA G. ROSENBERG
 United States Magistrate Judge

26
 27 ⁸ The ALJ incorrectly states that Dr. LaHaye began seeing Begey on January 4,
 28 2007. AR 18. The difference in time is less than a week and the error is harmless.
 See *Stout*, 454 F.3d at 1055.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28